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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)	CASE NO. 12-CR-0723 EJD
)	
v.)	GOVERNMENT'S SENTENCING
)	MEMORANDUM
JOSE BARAJAS,)	
)	
Defendant.)	
)	
)	
)	

PRELIMINARY STATEMENT

The defendant Jose Barajas is scheduled to appear before the Court on May 21, 2015, to be sentenced on his guilty plea to the following counts in the Superseding Indictment: Racketeering Conspiracy, including conspiracy to commit murder (Count 1), Possession/Use of a Firearm During and in Relation to a Crime of Violence (Count 5), Use of a Firearm in Furtherance of a Crime of Violence Resulting in Murder (Count 6) and Distribution of Methamphetamine (Count 7). The government respectfully submits this sentencing memorandum to request that the Court sentence defendant Barajas to the low end of the applicable United States Sentencing Guidelines ("Guidelines"), which is a term of

GOVT'S SENTENCING MEMORANDUM
NO. 12-CR-0723 EJD

1 imprisonment of 444 months (324 months for counts 1 and 7, and a mandatory consecutive term of 120
2 months for counts 5 and 6).

3 As set forth in more detail in the United States Probation Department's Presentence Investigation
4 Report ("PSR"), defendant Barajas participated in the 2012 shooting death of an unarmed young man
5 who was standing in his driveway in San Jose at 4pm in the afternoon. The victim was shot because the
6 defendants perceived the victim as a rival gang member and the defendants were hunting for rival gang
7 members who had been disrespecting their gang's territory with graffiti. In fact, the victim was not a
8 gang member. On the day he was murdered by the defendants, the victim had just arrived home from
9 the veterinarian with his girlfriend and their sick dog.

10 Two years prior to the murder, defendant Barajas also participated in a violent gang assault in
11 Mountain View in November 2010. Since officially becoming a gang member in 2010, Barajas
12 regularly attended monthly gang meeting where he and fellow members paid dues to buy guns for the
13 gang and they passed around firearms so that members could use them to "put in work." After the 2012
14 murder, the murder weapon was passed to a juvenile gang member who Barajas assisted in chasing after
15 rival Norteño gang members that they had encountered near a liquor store. Finally, as part of his
16 ongoing gang activity, defendant Barajas acted as a middle man for crystal methamphetamine
17 trafficking, including a sale by his co-defendant to the FBI confidential informant (the "CI").

18 For the reasons that follow, the government believes that a sentence of no less than 444 months
19 is necessary to achieve the goals of sentencing.

20 **ARGUMENT**

21 **I. OFFENSE CONDUCT**

22 **A. Gang Criminal Conduct Generally**

23 From at least 2010, defendant Barajas was a member of a Sureño gang in San Jose (the
24 Colonias/VTG Gang) and went by the moniker "Oso," which means "bear." The primary illegal
25 activities of the Colonias/VTG Gang were violent crimes against Norteño gangs (including murder),
26 possession and use of firearms, narcotics trafficking, and armed robberies, including home invasion
27 robberies. The gang pooled money to buy guns for the gang and those guns were passed around to
28

1 fellow gang members who were instructed to “put in work,” meaning assault and kills Norteños. A
 2 video posted to YouTube in January 2012 depicts Barajas among the dozen gang members in the video,
 3 which features a series of photos of gang members flashing gang signs and photos of guns and knives set
 4 to rap music with lyrics about shooting rival gang members. The gang also trafficked in
 5 methamphetamine. Barajas was not known to sell drugs himself, but would act as a middleman for drug
 6 transactions.

7 B. The 2010 Gang Assault with a Deadly Weapon

8 On November 28, 2010, defendant Barajas was among a group of 15 Sureño gang members from
 9 San Jose that traveled to Mountain View and attacked several other gang members. The 15 gang
 10 members went to Mountain View in at least two separate vehicles: a minivan with Barajas and seven
 11 others, and an SUV with seven other Sureño gang members. During the attack, the men attacked the
 12 two of the victims using bats and similar striking weapons. These two victims suffered head injuries and
 13 other blunt trauma, which required them to go to the hospital. Based on descriptions of the suspects
 14 vehicles, within minutes of the attack the police located the 15 suspects inside two vehicles. In the
 15 minivan that Barajas was inside as a passenger with seven other gang members, the police found seven
 16 different weapons, including several knives, golf clubs, an aluminum baseball bat, and a metal rod. The
 17 police separately found the other vehicle with seven gang members, but did not locate any weapons in
 18 that vehicle.

19 All 15 men were charged with assault with a deadly weapon. Eventually the charges against
 20 Barajas were dismissed for unknown reasons.

21 C. The 2012 Homicide

22 1. Barajas Drove an Armed Rodriguez in Search of Rival Norteño Gang Members.

23 On the afternoon of August 13, 2012, defendant Barajas was driving his Mustang and
 24 accompanied by co-defendant and fellow gang member Victor Rodriguez. They were driving around in
 25 an area near the boundary of Colonias/VTG Gang territory looking for Norteños, because Norteños had
 26 recently been “tagging” (gang graffiti) in the defendants’ gang’s territory. As Barajas slowly drove
 27 through the residential neighborhood, Rodriguez was in the front-passenger seat armed with a .38 caliber
 28

1 revolver. Barajas knew that Rodriguez had the revolver on his person.

2 Rodriguez and Barajas spotted Victor Mendoza, a 21-year-old Hispanic male, standing alone in
3 the driveway in front of his house. Mendoza had just arrived home with his girlfriend after taking their
4 dog to the veterinarian. The defendants saw that Mendoza, whom they did not know, was wearing red
5 clothing and believed that he was a Norteño gang member. After passing the house, Rodriguez directed
6 Barajas to make a U-turn and drive the car back to where Mendoza was standing. Barajas made the U-
7 turn and stopped in the street in front of Mendoza's driveway. Rodriguez told Barajas, "this guy is
8 going to die right now," and got out of the car with his revolver. Defendant Rodriguez pulled out the
9 gun, and shot at Mendoza twice, hitting him once in the face at close range. Mendoza was standing at
10 the bottom of his driveway within a few feet of Rodriguez and immediately dropped when he was shot.
11 Mendoza was unarmed and did not have a chance to flee before being shot. Defendant Rodriguez
12 returned to the car and started laughing, and Barajas drove away. Victim Mendoza was found by his
13 girlfriend a few minutes later lying in the driveway unconscious, but still breathing and moaning loudly.
14 Mendoza died two days later.

15 Rodriguez cleaned the murder weapon, burned his clothes and eventually passed the revolver to
16 another gang member who was a juvenile. The gun was recovered by local law enforcement during a
17 car stop a few days later in which the juvenile and two adult females were driving in a car in San Jose.

18 2. Barajas Bragged About the Murder.

19 The day after the shooting of Mr. Mendoza, Barajas discussed the details of the murder with the
20 FBI's CI. This was not a confession. It was braggadocio, offered freely, voluntarily, and repeatedly.
21 Barajas gave graphic details and was proud of what he had done.

22 On August 14 and 16, 2012, in a motel room in San Jose, Barajas recounted the facts and
23 circumstances of the shooting. He stated that the police did not know who was responsible for the
24 murder. He told the CI that he was confident that the civilians he saw in the neighborhood during the
25 shooting would not say anything to the police. He also claimed that the murder went smoothly, as if it
26 had been planned out.

27 On August 29, 2012, Barajas met again with the CI. He told the CI that Rodriguez still had the

1 “toy” (the .38 revolver used in the murder). Barajas referred to the victim using a derogatory term.
2 Barajas also showed the CI a YouTube video that depicts Barajas among the dozen gang members in the
3 video, which features a series of photos of gang members flashing gang signs and photos of guns and
4 knives set to rap music with lyrics about shooting rival gang members. On September 2, 2012, Barajas
5 met again with the CI, and told the CI that he was not worried about the two civilians in the
6 neighborhood who may have witnessed the shooting.

7 On September 4, 2012, law enforcement found the murder weapon in the possession of a
8 juvenile Sureño gang member who associated with Barajas. Barajas later told the CI that the police had
9 recovered the murder weapon from the juvenile, and the juvenile would be regulated or physically
10 disciplined by the gang for losing the weapon to law enforcement. He later advised the CI tha the
11 juvenile had in fact been assaulted as a form of gang discipline.

12 Starting in September, for the purpose of obtaining additional evidence against Barajas and
13 Rodriguez, the FBI through the CI, invited Barajas to assist with the delivery of cars he was told were
14 loaded with cocaine. Barajas freely accepted the invitation to commit this additional criminal conduct.
15 In fact, Barajas was eager to participate. The cars were wired to record the conversations, which
16 included additional discussions of the murder, as described below.

17 On September 12, 2012, approximately one month after the murder, the CI invited defendant
18 Barajas to assist him to transport a car that supposedly contained cocaine. Barajas was paid \$300 for his
19 assistance. During the trip, Barajas recounted the homicide and they also discussed obtaining
20 methamphetamine from co-defendant Rodriguez for the CI. Barajas discussed how the murder weapon
21 was recently recovered by the police from a juvenile gang member, but that Rodriguez had already
22 cleaned the gun after using it in the murder by inserting a drill inside the barrel. Barajas said that on
23 September 3, 2012, he had driven the same juvenile gang member to an area where the juvenile chased
24 after some Norteños with the same .38 revolver, but failed to shoot at them. Regarding the murder,
25 Barajas again discussed the civilians who lived in the neighborhood and were potential witnesses, and
26 how he was not scared about them because he knew where they lived (implying he or fellow gang
27 members could intimidate or retaliate against them if necessary). Barajas claimed that the murder had

1 the intended deterrent effect because Norteños were no longer tagging in their neighborhood. Barajas
2 stated that Norteños now know that if they tag in Sureño territory, “they will get dropped.” Barajas
3 connected the CI to Rodriguez for the purchase of a half-ounce of methamphetamine for \$350, which
4 was consummated a few days later.

5 On September 21, 2012, both Barajas and Rodriguez assisted the CI to transport another car that
6 supposedly contained cocaine. During that drive, Rodriguez described the murder and how he cleaned
7 the gun and burned his clothes afterward. Barajas also described the murder and how the victim
8 collapsed when he was shot in the head. Rodriguez stated it was not his first shooting, so he knew how
9 to destroy evidence. Later in the drive, Rodriguez recounted how he had been approached by another
10 Sureño gang member to do a “mission” to kill a *Nuestra Familia* member who lived at a location out of
11 town. Barajas was an active participant in all of these conversations.

12 Barajas was regularly contacting the CI to do additional deliveries of vehicles with cocaine. The
13 CI advised him that there was nothing available at the time, but would involve him in the future.

14 **II. SENTENCING GUIDELINES CALCULATION**

15 As the Court is aware, it must correctly apply the Sentencing Guidelines and then consider the
16 factors laid out in 18 U.S.C. § 3553(a) to arrive at the appropriate sentence. *United States v. Mix*, 457
17 F.3d 906, 911 (9th Cir. 2006). Although the Guidelines are not binding, “it is fair to assume that they,
18 insofar as practicable, reflect a rough approximation of sentences that might achieve § 3553(a)’s
19 objectives.” *United States v. Rita*, 551 U.S. 338, 349 (2007). The Guidelines “provide uniformity,
20 predictability, and a degree of detachment lacking in our earlier system.” *Koon v. United States*, 518
21 U.S. 81, 113 (1996).

22 The parties agree that the defendant’s Total Offense Level is 40 for Counts 1 and 7, and that a
23 consecutive term of 10 years is applicable for Counts 5 and 6 (these two counts merge). The defendant
24 is in Criminal History Category II. Thus, the applicable Guidelines range is 444 to 525 months.
25 Pursuant to the plea agreement, the government agreed not to argue for a sentence within the Guidelines
26 range, but no higher than 480 months.

1 **III. SECTION 3553(a) FACTORS**

2 **A. Nature and Circumstances of the Offense & Characteristics of the Defendant**

3 The sentence imposed must reflect “the nature and circumstances of the offense and the history
4 and characteristics of the defendant.” 18 U.S.C. § 3553(a)(1).

5 1. Nature and Circumstances of the Offense

6 Admissions in the plea agreement and source reporting establish that since at least 2010, the
7 defendant was an active Sureño gang member. As set forth in more detail in the admissions contained in
8 the plea agreement, being an active Sureño gang member includes:

- 9 (1) coordinating and engaging in criminal activity together with fellow Sureños such as
10 drug dealing, robberies and other violent crimes;
11 (2) fighting Norteños for control of territory in which to (a) conduct narcotics trafficking
12 and other crimes, (b) assert their gang identity and gain notoriety as a powerful gang
13 that is not to be challenged, and (c) recruit and influence non-gang members; and
14 (3) confronting and attacking any suspected Norteño that he encounters.

15 As a member of his specific Sureño clique (the Colonias/VTG Gang Enterprise), defendant
16 Barajas attended gang meetings approximately once a month where members had to pay dues and were
17 checked off on a list of members. The dues were used to buy firearms for the gang. During the
18 meetings, current gang activities and priorities were discussed, such as defending the territory against
19 encroachment by Norteños and the need for younger members and associates to “put in work” (*i.e.*, to
20 engage in violence against Norteños and to sell drugs). To facilitate “putting in work,” firearms were
21 passed among gang members who were expected to use the guns to carry out the gang’s activities,
22 typically attacking Norteños, and then passed on to a fellow gang member so he can do the same.
23 Sometimes new members were “jumped in” at the meetings, which was an initiation ritual that involved
24 the new member being assaulted by three gang members for a count of 13 seconds.

25 As set forth in the plea agreement, defendant Barajas admits that from at least 2010, he agreed
26 that Colonias/VTG Gang Enterprise members would commit multiple acts of racketeering in the conduct
27 of the affairs of the Colonias/VTG Gang Enterprise, including acts involving: (i) murder, conspiracy to
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1 commit murder, and attempted murder; (ii) conspiracy to distribute and to possess with the intent to
2 distribute controlled substances, and distribution and possession with intent to distribute controlled
3 substances; and (iii) robbery and attempted robbery.

4 In carrying out this RICO conspiracy, in August 2012 defendant Barajas drove co-defendant
5 Rodriguez around hunting for rival Norteños who had been spray painting their gang graffiti on the
6 defendants' gang's turf. Barajas knew that Rodriguez was armed with a .38 caliber revolver. Upon
7 seeing victim Mendoza, the defendants thought he was a Norteño and Rodriguez directed Barajas to
8 make a U-turn, which he did. Barajas then stopped the car right in front of victim Mendoza's driveway,
9 and Rodriguez exited the car, pulled out the .38 caliber revolver that he had been carrying on his person,
10 and shot Mendoza once in the head at close range. After shooting the victim in the head, Rodriguez
11 reentered Barajas's car and laughed about the shooting. The defendants later bragged to their fellow
12 Sureño gang members about the shooting. Barajas also assisted a juvenile gang member who received
13 the murder weapon after the homicide, and that juvenile chased after rival Norteño gang members with
14 the murder weapon while he was with Barajas.

15 Also as part of the RICO conspiracy, defendant Barajas also participated in a gang assault with a
16 deadly weapon in Mountain View, California, in November 2010. Barajas was one of 15 Sureño gang
17 members who traveled from San Jose to Mountain View and attacked other gang members with baseball
18 bats and similar striking weapons, which resulted in two victims going to the hospital.

19 As a further aspect of the RICO conspiracy, defendant Barajas acted as a middleman to assist in
20 the distribution of methamphetamine. On one occasion, Barajas facilitated co-defendant Rodriguez's
21 sale of approximately a half ounce of crystal methamphetamine to the CI working with the FBI. Barajas
22 also eagerly assisted the CI to transport vehicles he believed were loaded with drugs in a secret
23 compartment.

24 2. History and Characteristics of the Defendant

25 Defendant Barajas's history of prior convictions consists of only two juvenile convictions, both
26 for Vehicle Theft. Barajas has two other arrests for violent crimes, the gang assault in Mountain View
27 described above and a fight with his brother in 2011, neither of which resulted in convictions.

1 Barajas had a difficult home life growing up due to his father's drug use and violence. At age
2 14, his parents permanently separated. At age 16, Barajas began hanging around with members of the
3 Colonias gang, and Barajas was formally "jumped in" to the gang at age 19. From the age of 18 through
4 the time of his arrest in this case, Barajas was employed as a maintenance worker for Corporate Care.

5 The defense commissioned a psychological evaluation, which was provided to Probation and the
6 government. The report concluded that Mr. Barajas meets the criteria for having an intellectual
7 disability and that this is relevant in this case for four reasons: (1) he is unusually vulnerable to being
8 exploited, persuaded, misled, or taken advantage of by others; (2) he has an impaired ability to
9 accurately perceive other people's motives and intentions; (3) he has an impaired ability to foresee and
10 consider the consequences of his actions; and (4) his desire to prevent people from discovering his
11 intellectual disability leads him to pretend to have knowledge of comprehension that he lacks.

12 Despite the government's numerous requests to speak to the author of the psychological
13 evaluation, the defense has not made him available in person or by phone. Therefore, if the Court
14 intends to rely on the findings of the report to impose a sentence below the applicable Guidelines range,
15 then the government requests a hearing regarding the contents of the report.

16 Among the concerns the government has about the report are the following. The author did not
17 review audio and video recordings of the defendant and his discussion of his crimes with his co-
18 conspirator and the CI. These interactions appear to show a relationship that directly contradicts the
19 notion that the defendant was possibly manipulated by others in this case or confused or surprised at any
20 of the crimes that occurred.¹ Similarly, the author did not review the defendant's own statements about
21 the crime that were provided to law enforcement at the time of his arrest. A related concern is that the
22 author did not attempt to ask questions about the crimes in this case to see whether the defendant was
23 actually manipulated by others, or confused or surprised at the results of his crimes. The author seems
24

25 ¹ On page 27 of the report, there is a description of Barajas's social interaction with the author as
26 being very reserved and that this behavior was typical of Barajas as reported to the author by others.
27 The government is providing to the Court for its consideration, a portion of the audio/video recording in
28 which Barajas, his co-defendant, and the CI are in a car and discussing the murder. This clip captures
the social interactions of Barajas very clearly, and he is not reserved. He often interrupts his co-
defendant to clarify facts about the murder. He appears very confident and comfortable.

content to conclude that Barajas is generally susceptible to manipulation, confusion, etc., while making no attempt to determine if that happened here. There are a number of other concerns the government has with respect to specific statements in the report that it believes would necessitate an evidentiary hearing if the Court intends to rely upon the report to sentence the defendant below the Guidelines.

B. Seriousness of the Offense, Respect for the Law & Just Punishment

The sentence also must reflect the seriousness of the offense, promote respect for the law, and provide just punishment. 18 U.S.C. § 3553(a)(2)(A).

Defendant Barajas committed the most serious crime possible: murder. It was a crime he had dedicated himself to commit over a long period of time as a gang member.² It was a crime he committed after committing another violent crime on behalf of the gang: the 2010 Assault with a Deadly Weapon. The murder was the result of the defendants' hunt for gang rivals (Norteños) to retaliate against for tagging gang graffiti in the defendants' gang's territory. While defendant Barajas did not himself do the shooting, he knew co-defendant Rodriguez had a revolver and they were out hunting for Norteños to attack. When Rodriguez told Barajas to make a U-turn so they could go back to where they had spotted their target standing in his driveway, Barajas understood that Rodriguez intended to attack the victim and Barajas drove to that location to assist Rodriguez in that regard. After Rodriguez shot the victim in the head, Barajas drove off with Rodriguez. Later, on multiple occasions, Barajas bragged to his fellow Sureño gang members about the homicide. In addition, after the homicide, Barajas assisted a juvenile gang member that was armed with the same murder weapon. That juvenile gang member ran after some rival gang members and was brandishing the firearm at them.

The ongoing nature of defendant Barajas's criminal activity, and the particularly violent crimes he is known to have directly committed, demand a weighty sentence to promote respect for the law and to provide just punishment.

C. The Need for Specific & General Deterrence

The sentence must advance specific and general deterrence as well. *See* 18 U.S.C. §

² A fundamental aspect of being a Sureño gang member is a commitment to attack and kill rival Norteños. The August 2012 murder represented a manifestation of this long-time commitment.

3553(a)(2)(B), (C). A substantial sentence of imprisonment is needed to advance general deterrence. Defendant Barajas's family or friends may be present at the sentencing. Whatever prison term the Court selects will be discussed in Sureño gangs in San Jose for years to come. The sentence should make clear that the federal government, and federal courts, will not tolerate gang violence. Although there was only one shooter in this case, the defendant played an instrumental role in the homicide. In fact, the gang itself played an instrumental role. A lengthy sentence is required to show other gang members that if they support violence perpetrated by their fellow gang members, even when they themselves stop short of being among the more violent actors within their gang, they will suffer significant legal consequences.

CONCLUSION

For all of the foregoing reasons, the government respectfully recommends that the Court sentence the defendant at the low end of the applicable Guidelines range, which is 444 months imprisonment. The government also recommends a five-year supervised release term and a \$400 Special Assessment.

Dated: May 14, 2015

Respectfully submitted,

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